IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.73/2002
AND CIVIL APPLICATION NO.372/2002

1. Babani Sawant, (deceased)

1(a) Ms. Pritam B. Sawant,
daughter of the deceased,

1(b) Mr. Siddesh B. Sawant,
son of the deceased.

1(c) Mr. Sunay B. Sawant,
son of the deceased,

All r/o. Silva Nagar,
Ponda, Goa.

2. Smt. Nirmala Babani Samant,
residing at Silva Nagar,
Ponda, Goa. .... Appellants.

Vs.

Smt. Vinaya Atchut Govekar,
residing at Silva Nagar,
Ponda, Goa. .... Respondent.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. A.D. Bhobe, Advocate for the appellants.

Mr. R.V. Kamat, Advocate for the respondent.

CORAM : F.I. REBELLO, J.

DATE : JULY 18, 2003.

ORAL ORDER

The suit by the respondent against appellants was on the ground that the appellants had encroached on the property of the respondent in an area of 5.34 sq. metres, having length of 8.90 metres and breadth of 0.60 metre. The appellants denied the same. It was

their contention that in the year 1982, the respondent approached the appellants and told that they would construct a compound wall and since the compound wall would be for the benefit of both, half should be built by the appellants and half by the respondent. It is set out that accordingly, the appellants constructed the balance 10 metres. It was their contention that, therefore, there was no encroachment and the compound wall was constructed on the line of the wall already constructed by the respondent herein.

2. The respondent herein led the evidence. At the instance of the appellants, one Shri Gangadhar Alornekar was appointed as Commissioner. In his report, he has stated that the encroachment was to the extent of 0.30 metre. That evidence was accepted by the trial Court and decreed the suit.

An appeal came to be preferred. The point No.2 was the issue of encroachment. The learned appellate Court concurred with the findings of the trial Court and accordingly rejected the appeal.

3. At the hearing of this appeal, on behalf of the appellants, it is contended that the Commissioner had not considered the dimensions of the other plots and from the cross examination of the Commissioner, it

would be clear that if all eight plots which are in line had been inspected, a difference of 0.30 metres is possible. The learned Counsel, therefore, contends that in fact that would show that there is no encroachment on the part of the appellants herein.

4. From what is argued, it is clear that it is merely based on appreciation of evidence and that there is no substantial question of law. Even, otherwise, the dispute was between the appellants and the respondent in respect of their boundary. For that purpose it is immaterial, in so far as other plots are concerned. The two sale deeds of both the parties were before the Commissioner. Based on the boundaries in the sale deeds, the Commissioner gave his report. In fact, the Commissioner was appointed at the request of appellants. In my opinion, no interference is called for with the concurrent findings of the two courts below. The appeal is, accordingly, dismissed, with no order as to costs.

F.I. REBELLO, J.

ssm.